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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,386	05/03/2006	Helmut Jerg	2003P01287WOUS	1892

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BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER

RIGGLEMAN, JASON PAUL

ART UNIT	PAPER NUMBER
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1711

NOTIFICATION DATE	DELIVERY MODE
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02/02/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

NBN-IntelProp@bshg.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/578,386

Applicant(s)

JERG ET AL.

Examiner

JASON P. RIGGLEMAN

Art Unit

1711

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 January 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 24-42.
Claim(s) objected to: _____.
Claim(s) rejected: 11-23.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Michael Barr/
Supervisory Patent Examiner, Art Unit 1711

Jason P Riggleman
Examiner
Art Unit: 1711

Continuation of 11. does NOT place the application in condition for allowance because: The applicant argues that Lutolf "does not teach at least one distributor for regulating the supply of rinsing liquid to the at least one spray channel. Applicant argues that the check valves 60, 80, of Lutolf fails to teach that the pressure is variable and that the check valves do not vary the pressure of the liquid. Examiner states that the claims do not require any such structure. For example, in claim 11, the only requirement is that there is a pipe with open ends which liquid "can be supplied in a pressurized manner". This is both intended use and not a positive recitation due to the optional language used. The applicant further argues that the ends of the spray channel in Lutolf are not "open". Examiner states, the Lutolf reference teaches ends in which liquid can be supplied – they are "open". The applicant has failed to amend the original claims and the language of the claims is extremely broad.

Applicant's arguments that one would not modify Lutolf with Van Dijck are not persuasive. It is just as impractical to manually operate valves on a foot bath as on a dishwashing machine. The fundamental principle is that surges of liquid can be produced by opening the valves. It would be obvious to combine the references to produce fine control of the pulsing of the spray -- which is especially useful in a system with a stationary spray system -- to effectively wash the dishes and achieve the expected result. The applicants argument that there is no articulated reasoning with some rational underpinning to support the conclusion of obviousness, in regards to the rejection of claims 12-13 and 16 a 35 U.S.C. 103(a) as being unpatentable over Lutolf (FR2285838) in view of Van Dijck (US Patent No. 2654894) in view of Steen (GB Patent Publication No. GB949954) and further in view of Bolla (CH571852), is not true. Examiner stated it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Lutolf, as modified by Van Dijck, as modified by Steen, with Bolla to create a dishwashing machine with an automated-alternating spray pattern with fine control to achieve the expected result. The claim language of the distributor being movable in a selected one of a to-and-fro displacement and not a to-and-fro displacement simply permits the option of a movement of a non to-and-fro displacement, only. The applicant's arguments that the Perry reference simply discloses a stationary valve having a slide plate that reciprocates in the slot is "NOT mounted to be movable in a selected one of a to-and-fro movement in alternating directions" is not understood. The rejections are maintained.